

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 53 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SMRUTIBEN S BHAGAT

Versus

CONSERVATOR OF FORESTS

Appearance:

MR NK MAJMUDAR for Petitioner

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/02/98

ORAL JUDGEMENT

1. Challenge has been made by the petitioner by this special civil application to the order of the Gujarat Civil Services Tribunal, Gandhinagar dated 7-10-1985 passed in Appeal No.181/85 under which the order of the respondents dispensing with the services of the petitioner has been set aside but the backwages were not ordered to be given to her.

2. The learned counsel for the petitioner contended that the termination of the services of the petitioner was found to be illegal by the Tribunal then the consequential order would have been to give her all the reliefs including the relief of the backwages.

3. I do not find any merits in this contention of the learned counsel for the petitioner.

4. Few facts of the case are to be noticed, which are necessary for the purpose of deciding this special civil application. The petitioner, on his own application, was given the appointment by the respondents on the post of Librarian in the pay scale of Rs.425-700 in the year 1981. The learned counsel for the petitioner admits that as per the recruitment rules for the post of Librarian in the respondent department, the minimum qualifications required for the said post were degree in any faculty with degree or diploma in Library Science and the petitioner was not possessing the requisite qualifications. Be that as it may. Under the order dated 4-6-1982, the petitioner was placed in the pay scale of Rs.380-640 on the ground that she was not having the requisite qualifications. Under the order dated 7-12-1984 her services were terminated. She filed an appeal against this order to the higher authorities but the same was also rejected then she approached to the Gujarat Civil Services Tribunal at Gandhinagar by filing an appeal, which came to be allowed under the impugned order.

5. It is necessary to mention here that the respondents have not challenged the order of the Tribunal. So that part of the order of the Tribunal where the petitioner was ordered to be reinstated back in service is not in challenge. The petitioner's very entry in the service was contrary to the recruitment rules and her services were terminated as she was not possessing the requisite qualifications at the relevant time and that order cannot be said to be illegal or arbitrary. It is true that the petitioner has not concealed any fact from the authorities but it is also equally true that the petitioner has been given the appointment without any selection i.e. without inviting applications from the open market, and as such, it is nothing but only an appointment, which she got because of somebody who was there to support her in the department. Normally such appointments are only possible where some support is there in the department.

6. The learned counsel for the petitioner contended

that the Tribunal should have awarded the backwages as it has set aside the order of the termination of her services but the fact is that the petitioner's very entry in the service was bad in law though it is different matter that the order of Tribunal has not been challenged by the respondents. I do not consider it to be a fit case where this Court should interfere with the order of the Tribunal sitting under Article 227 of the Constitution. It is fruitful to refer here the decision of the Hon'ble Supreme Court in the case of Ahmedabad Municipal Corporation vs. Virendra Kumar Jayantibhai Patel reported in JT 1997 (7) SC 14.

5. The second reasoning given by the tribunal in issuing direction to the Corporation for absorbing the respondent in its permanent service which was not touched upon by the High Court is that the case of the respondent required sympathetic consideration, as presumably the respondent has been visiting the Corporation's Clinic since early seventies, remains to be considered. As noticed earlier, the recruitment of the doctors in the clinic run by the Corporation is made in accordance with the statutory rules and by no other method. Under the rules the vacancies are advertised for inviting applications from eligible candidates. After the applications are received the Selection Committee is constituted to select the candidates for appointment in the Corporation's clinic. Only after the candidates are selected they are taken in the service. It is also noticed earlier that respondent appeared before the Selection Committee but was not selected. Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by statutory rules. If the reasoning given by the tribunal is accepted, the statutory rules would become nugatory or otiose and the department can favour any person or appoint any person without following procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get any chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion.

It is therefore not safe to bend the arms of law only for adjusting equity. We, therefore, find that the reasoning given by the tribunal that sympathy demands the absorption of the respondent in the service of the Corporation suffers from error of law.

7. Though the petitioner could not have been ordered to be reinstated back in the service but the Tribunal has passed that order and that order has not been challenged by the respondents before this Court. The petitioner felt aggrieved of the part of the order but that relief cannot be granted to her as her initial entry in the service was contrary to the recruitment rules as well as she was lacking the requisite qualifications.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged.

zgs/-